



**GST on Tobacco and
Tobacco products &
Modus Operandi of
Tax Evasion**

- Tobacco is one of the most economically significant agricultural cash crops in the world. In India four states produce more than 90% of tobacco namely Gujarat 47%, Andhra Pradesh 23%, Uttar Pradesh 12% and Karnataka 10%.
- India has the unique position of growing all types of tobacco which are broadly classified as:

Sr.	Product	State
1.	FCV Tobacco	Andhra Pradesh & Karnataka
2.	Bidi Tobacco	Gujarat & Karnataka & Andhra Pradesh
3.	Cigar & Cheroot	Tamil Nadu & West Bengal
4.	Hookah Tobacco	Assam, West Bengal, Bihar & UP
5.	Chewing & Snuff	Tamil Nadu, West Bengal, Bihar, Assam & U.P.
6.	Natu, Burley, Lanka & HDBRG	Andhra Pradesh
7.	Pikka Tobacco	Orissa

- Nicotiana tabacum/rustica means Tobacco plant contains alkaloids mainly nicotin that is why it is widely used in intoxication and for producing intoxicating products.
- Tobacco used for jarda scented tobacco and or making bidi comes mainly from the state of Gujarat while virginia tobacco whether in FCV or SCV form used in cigarettes comes mainly from the state of Andhra Pradesh and Telangana. For Cigar and cheroots tobacco mainly comes from state of West Bengal and Tamilnadu.
- Tobacco plant grown in Uttar Pradesh is used for making chewing, snuff and hukka tobacco. Tobacco growers at the time of harvesting make stacks of 6-9 tobacco leaves, which is called as gaddi or gadiya.
- Agriculturist sale tobacco in the form of gadiya to raw tobacco manufacturers, who in turn by the process of cutting, sorting, sieving and again sorting produce different raw tobacco forms namely tobacco pattidana/orccha, nasdana, rawa, Tobacco dust/garda etc.

- Above forms of raw tobacco used in production of branded/unbranded unmanufactured tobacco with or without lime tubes, chewing tobacco with or without lime tube, filtered khaini, snuff, tobacco refuse, hukka tobacco etc.
- As per notification No. 04/2017 – Central Tax (Rate) Dated 28-06-2017 on tobacco leaves tax shall be paid on **reverse charge basis** by recipient of supply.
- Tobacco and tobacco products are perishable goods as per Notification no.- KA.NI.-2-1300/XI-9 (47)/17-U.P.ACT-1-2017-ORDER-(128)-2018 Dated 12-07-2018 under section 67(8) of UPGST Act-2017.

A close-up photograph of several pink flowers with five petals each, set against a dark green, out-of-focus background. The flowers are arranged in a cluster, with some in sharp focus in the foreground and others slightly blurred in the background.

**Taxability on
tobacco and
tobacco products**

Sr.	Description of tobacco and tobacco products	Rate of Tax	Cess
1	whole tobacco leaf in original form	5	0
2	Processed tobacco ingredients other than whole tobacco leaf such as oraksha, nas, nasdana, rava, garda etc.	28	0
3	Unmanufactured tobacco (without lime tube) bearing a brand name	28	71 %
4	Unmanufactured tobacco (with lime tube) bearing a brand name	28	65 %
5	Tobacco refuse, bearing a brand name	28	61 %
6	"Homogenized" or "reconstituted" tobacco, bearing a brand name	28	72 %
7	Preparations containing snuff	28	72 %
8	Chewing tobacco(with lime tube)	28	142 %
9	Chewing tobacco(without lime tube)	28	160 %
10	Filter khaini	28	160 %
11	Jarda scented tobacco	28	160 %
12	Pan masala containing tobacco 'Gutkha'	28	204 %
13	Tobacco extracts and essence bearing a brand name	28	72 %
14	Tobacco extracts and essence bearing a brand name	28	65 %
15	'Hookah' or 'gudaku' tobacco not bearing a brand name	28	72 %
16	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name	28	17 %
17	Other water pipe smoking tobacco not bearing a brand name	28	11 %
18	Smoking mixtures for pipes and cigarettes	28	290 %
19	Other smoking tobacco bearing a brand name	28	49 %
20	Cigar and cheroots	28	21 % or Rs. 4170 per thousand, whichever is higher

Sr.	Description of tobacco and tobacco products	Rate of Tax	Cess
21	Cigarillos	28	21 % or Rs. 4170 per thousand, whichever is higher
22	Cigarettes containing tobacco other than filter cigarettes, of length not exceeding 65 millimeters	28	5% + Rs. 2076 per thousand
23	Cigarettes containing tobacco other than filter cigarettes, of length exceeding 65 millimeters	28	5% + Rs. 3668 per thousand
24	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimeters or its actual length, whichever is more) exceeding 65 millimeters	28	5% + Rs. 2076 per thousand
25	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimeters or its actual length, whichever is more) exceeding 65 millimeters but not exceeding 70 millimeters	28	5% + Rs. 2747 per thousand
27	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimeters or its actual length, whichever is more) exceeding 70 millimeters but not exceeding 75 millimeters	28	5% + Rs. 3668 per thousand
28	Other cigarettes containing tobacco	28	36 % + Rs. 4170 per thousand
29	Cigarettes of tobacco substitutes	28	Rs. 4006 per thousand
30	Cigarillos of tobacco substitutes	28	12.5 % or Rs. 4006 per thousand whichever is higher
31	Other	28	12.5 % or Rs. 4006 per thousand whichever is higher

However above rates of cess on tobacco products has been changed from 01-04-2023. The CBIC vide Notification No. 01/2023-Compensation Cess and Notification No. 02/2023-Compensation Cess (Rate) both dated March 31, 2023 compensation cess rate for pan masala and all unbranded/branded goods other than pan masala containing tobacco ‘gutkha’ and “Homogenised” or “reconstituted” tobacco, bearing a brand name, has been changed w.e.f. April 01, 2023 as below:-

Sl. No of 1/201 7 dt 28/06/ 2017.	Chapter/Heading/Sub-Heading/Tariff Item	Description of Goods	Rate of Goods and Services tax compensation cess (Prior to 1st April 2023)	Rate of Goods and Services tax compensation cess (From 1st April 2023)
1.	2106 9020	Pan- Masala	60%	0.32R per unit “R” means “retail sale price” as provided in the Schedule to the Compensation Cess Act.
5.	2401	Unmanufactured tobacco (without lime tube)- bearing a brand name	71%	0.36R per unit
6.	2401	Unmanufactured tobacco (with Lime tube) bearing a brand name	65%	0.36R per unit
7.	2401 30 00	Tobacco refuse, bearing a brand name	61%	0.32R per unit

19.	2403 11 10	'Hookah' or 'Gudaku' tobacco bearing a brand name	72%	0.36R per unit
20.	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name	17%	0.12R per unit
21.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name	11%	0.08R per unit
22.	2403 11 90	Smoking mixtures for pipes and cigarettes	290%	0.69R per unit
23.	2403 19 90	Other smoking tobacco bearing brand name	49%	0.28R per unit
24.	2403 19 90	Other smoking tobacco not bearing a brand name	0.08R per unit	0.08R per unit
24A.	2403 91 00	Homogenised" or "reconstituted" tobacco, bearing a brand name		0.36R per unit
25.	2403 91 00 or 2404 11 00 2404 11 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name	72%	

26.	2403 99 10	Chewing tobacco (without lime tube)	160%	0.56R per unit
27.	2403 99 10	Chewing tobacco (with lime tube)	142%	0.56R per unit
28.	2403 99 10	Filter khaini	160%	0.56R per unit
29.	2403 99 20	Preparations containing chewing tobacco	72%	0.36R per unit
30.	2403 99 30	Jarda scented tobacco	160%	0.56R per unit
31.	2403 99 40	Snuff	72%	0.36R per unit
32.	2403 99 50	Preparations containing snuff	72%	0.36R per unit
33.	2403 99 60	Tobacco extracts and essence bearing a brand name	72%	0.36R per unit
34.	2403 99 60	Tobacco extracts and essence not bearing a brand name	65%	0.36R per unit
35.	2403 99 70	Cut tobacco	20%	0.14R per unit
36.	2403 99 90	Pan masala containing tobacco 'Gutkha'	204%	0.61R per unit
36A.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name		0.43R per unit
36B.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name		0.43R per unit
37.	2403 99 90 2404 11 00, 2404 19 00	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name	96%	
38.	2403 99 90 2404 11 00, 2404 19 00	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name	89	



Modes of tax
evasion

- There is high probability of tax evasion at first purchase level because of reverse charge basis taxability on tobacco leaves.
- High rates of compensation cess on Manufactured tobacco products makes them highly lucrative for tax evaders.
- Under-valuation, miss-declaration of name or quantity, without valid bill/E-way bill and using e-way bill more than one time during transportation are common modus operandi of tax evasion at the stage of supply of unmanufactured raw tobacco to the manufacturers of branded/unbranded manufactured tobacco products.
- Most common modus operandus of tax evasion at the stage of supply of branded/unbranded manufactured tobacco products are re-use of e-way bill and under valued bill.
- Undeclared or mis-declared transportation is the most common modus operandus of tax evasion in cigarette, cigar etc.



**Ways to curb
tax evasion**

- ❖ Tobacco produced in Uttar Pradesh used in manufacturing in hukka, chewing and snuff tobacco so there is high frequency of transportation of unmanufactured raw tobacco.
- ❖ There is a need of precise and intelligence based mobile squading to curb tax evasion during above transportation. Mobile squad should check for mis-declaration, under valuation and mis-use of e-way bill.
- ❖ Precise and intelligence based localised or centralised S.I.B. raids after due data analysis and case profiling can be highly effective.
- ❖ During S.I.B. raids and checking by mobile squad it will be handy and beneficial to know about practice of packing of different forms of unmanufactured raw tobacco, which are as follows:-

Sr.	Name	Packaging	Picure of commodity
1.	Tobacco leaves bundle means gadiya bundle	80 to 120 kg generally.	
2.	Pattidana/Orccha	bags of 40 to 45 kg generally.	
3.	Nasdana	bags of 40 to 55 kg generally.	
4.	Rava	bags of 40 to 50 kg generally.	
5.	Tobacco dust/garda	bags of 40 to 50 kg generally.	

- ❖ As there is frequent movement of Gujarat tobacco and Virginia tobacco from Andhra Pradesh through and in state of Uttar Pradesh, so Mobile squad shall check mis-declaration and under valuation during transportation.
- ❖ In case of bidi precise and intelligence based S.I.B. raids after due data analysis and case profiling can curb tax evasion.
- ❖ Tax evasion in branded/unbranded packed chewing tobacco, khaini and scented jarda can be curbed by data and intelligence based mobile squading as RFID and vehicle tracking system is quite handy for finding out re-use of e-way bill.
- ❖ Centralised S.I.B. raid on manufacturers of chewing tobacco, khaini and jarda with their inward-outward suppliers can curb tax evasion at this stage. It is important to use RFID and toll data during data analysis and noting optimum capacity of pouch packing machine and use of fuel with working hours per day.



Landmark Judgements

- ❖ **Writ tax No. 866/2019 M/s Kay pan fragrances Pvt. Ltd. Vs. State of Uttar Pradesh and 2 others** – Hon'ble Allahabad High Court pronounced that in section 67(8) and Rule 141 of GST Act-2017 procedure for release of perishable goods is given and seized goods can be released on its compliance.
- ❖ **Civil Appeal No. 8941/2019 (petition for special leave to appeal) State of Uttar Pradesh vs. M/s Kay pan fragrances Pvt. Ltd.** Hon'ble Supreme court of India in this landmark judgement pronounced that “*In the first place, we find force in the submission canvassed by the State that a complete mechanism is predicated in the Act and the Rules for release and disposal of the seized goods and for which reason, the High Court ought to have been loathe to entertain the Writ Petitions questioning the seizure of goods and to issue directions for its release.*” apart from it in all the release orders of high courts on basis of indemnity bonds reversed by the Hon'ble apex court.
- ❖ **Writ tax No. 1403/2022 M/s Adarsh Tobacco company Vs. State of Uttar Pradesh and 3 others** – Hon'ble Allahabad High Court pronounced that “We find that the petitioner having not complied with the requirement of release of seized goods that is i.e. perishable goods, is not entitled by any direction by this court for release of such goods.



Thank You



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